

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;)	Civ. No. CV03 00385 SOM-LEK
)	(Copyright)
Plaintiff,)	
)	DECLARATION OF TIMOTHY J.
vs.)	HOGAN; EXHIBITS “1” & “2”
)	
HAWAIIAN EXPRESS SERVICE,)	
INC., a California corporation; et al.,)	
)	
)	
Defendants.)	
_____)	

DECLARATION OF TIMOTHY J. HOGAN

I, TIMOTHY J. HOGAN, am an attorney licensed to practice before all the courts of the State of Hawaii and I make this declaration under the penalty of perjury. All the statements herein are true and correct to the best of my knowledge, information and belief. If called upon to testify regarding the matters herein, I am competent and willing to do so.

1. Attached hereto as Exhibit “1” is a true and correct copy of the October 25, 2006, Report of Special Master on Defendants Guidance Software, Inc. and Michael Gurzi’s Motion for Award of Attorney’s Fees and Costs and Defendants C&S Wholesale Grocers, Inc., C&S Acquisitions, LLC, ES3, LLC, and Richard Cohen’s Motion for Award of Attorneys Fees and Full Costs (Court

Docket No. 1012).

2. Attached hereto as Exhibit “2” is a true and correct copy of the July 6, 2006 Order Denying Plaintiff Wayne Berry’s Motion for Recusal (Court Docket No. 1002).

3. On May 5, 2006, pursuant to earlier court order, I attended with Mr. Berry a settlement conference in the Honorable Magistrate Judge Leslie Kobayashi’s courtroom. Mr. Berry and I sat in the jury room and spoke to the judge outside the presence of other counsel. We never spoke to the other parties who we are informed and believe were speaking to the Magistrate Judge while seated in court outside of my presence. No issues were resolved at that time related to fees and costs.

4. The Court of Appeals has stayed the appeals pending the disposition of the fee and costs motions that are the subject of this motion.

DATED: Honolulu, Hawai’i, November 28, 2006.

/s/ Timothy J. Hogan
TIMOTHY J. HOGAN